BALAKRISHNAN RAMASAMY

v.

**LUM LYE PENG & ANOR;
LEE LENG KWAI (INTERVENER)**

HIGH COURT MALAYA, KUALA LUMPUR
ZALEHA ZAHARI J
[CIVIL SUIT NO: 22-532-94]
13 JUNE 1996

CIVIL PROCEDURE: *Injunction - Balance of convenience - Whether rights of plaintiff had been infringed - Whether first defendant was entitled to take law into own hands*

SUCCESSION: *Letters of administration - Joint administration - Whether co-administrator had capacity to enter tenancy agreement on behalf of estate - Probate & Administration Act 1959, s. 60*

SUCCESSION: *Letters of administration - Joint administration - Whether co-administrator and beneficiary had right of occupation - Whether s. 7(2) and s. 8 of Specific Relief Act 1950 applicable*

The plaintiff was a tenant of a shophouse jointly purchased by the intervener and her brother, the first defendant's husband. Shortly after the purchase the first defendant's husband died leaving the intervener and the first defendant as the administrators of the estate. The tenancy agreement was signed between the intervener and the plaintiff for a period of two years in 1988 after which it was extended for another two years. A new agreemeent was entered into between the intervener and the plaintiff in 1992 for two years, with an option to renew for a further term of two years provided three months notice was given prior to the termination. The plaintiff exercised the option within the requisite period but one week into the extended agreement the shophouse was broken into, its contents thrown along the corridors and renovation work carried out in the shophouse. The first defendant argued that the tenancy agreement entered into by the intervener and the plaintiff was not binding on the estate as the estate was not cited as a party in the agreement and thus the exercise of the option conferred by an invalid agreement did not arise. The plaintiff caused a writ of summons to be issued and filed a summons in chambers for an injunction to restrain the defendants from entering the premises.

Held:

[1] Section 60 of the Probate and Administration Act 1959 clearly enabled the intervener to enter into a tenancy agreement in respect of the estate's half share. The agreement entered into between the plaintiff and the intervener was valid.

[2] Even though the first defendant in her capacity as the co-administrator and beneficiary had some right of occupation, s. 7 of the Specific Relief Act 1950 must first be complied with.

[3] The balance of convenience test lay in favour of the plaintiff and the status that had to be preserved was the position before the forcible entry by the first defendant.

[Application for injunction allowed.]

Case referred to:
American Cyanamid Co v. Ethicon Ltd [1975] 1 All ER 504 ***(refd)***

Legislation referred to:
Specific Relief Act 1950, ss. 7(2), 8
Probate and Administration Act 1959, s. 60

For the plaintiff - Chandra Nair; M/s Thevin Chandran & Wong
For the 1st defendant - Rajeswari Muniandy; M/s Rajesh & Assoc.
For the 2nd defendant - Malek Hakim; M/s Malik, Ngeow, Giok & Tan
For the intervener - Franklin Goonting; M/s Lim Soh & Goonting

JUDGMENT

Zaleha Zahari J:

This is an application by Balakrishnan Ramasamy ('the plaintiff') against Lum Lye Peng ('the 1st defendant') and Set Hon Kim ('the 2nd defendant') for an order that the 1st and 2nd defendants, whether by themselves, their servants or agents be restrained from entering upon any part of the premises known as 20A, Jalan Telawi Lima, 59100 Kuala Lumpur (hereinafter referred to as 'the said premises').

On 18 November 1994, Lee Leng Kwai ('intervener') (who owns a half share of the shophouse in her own right of which the premises are a part of and was one of the administrators of the estate of Lee Meng Kuan (deceased) between 27 May 1986 to 21 June 1994 which owns the other half share of the shophouse), applied for leave to intervene and be joined as a party to these proceedings. I had, on 22 December 1994, allowed the said application as I was satisfied that the intervener's presence was necessary to effectively adjudicate and settle all the questions involved in this action.

The background facts and rival contentions leading to this application are as follows:

The shophouse concerned was purchased by the intervener and her brother, Lee Meng Kuan, on 8 November 1983. On 9 November 1983, Lee Meng Kuan died. Thereafter, on 25 October 1986, the intervener and the 1st defendant (the widow of Lee Meng Kuan), were appointed administrators of his estate. The grant of letters of administration was duly issued to the 1st defendant and the intervener on 19 January 1987. Be that as it may, to date, the shophouse continues to be in the names of the intervener and the deceased, Lee Meng Kuan (Exh. 'B-3', Encl. 3).

According to the plaintiff he has been in exclusive possession of the said premises since 1988 upon which he runs a dental clinic. It was the plaintiff's case that he had entered into a tenancy agreement with the intervener in respect of the said premises, initially for a period of two years and which was subsequently extended for another two years.

According to the plaintiff, on 30 November 1992, a fresh tenancy agreement was entered into between him and the intervener in respect of the said premises, also for a period of two years from 1 October 1992 to 30 September 1994 (Exh. 'B-1', Encl. 3). *Vide* option cl. 4(e) of the new tenancy agreement the plaintiff was granted an option to renew the tenancy for a further term of two years provided that he gave three months notice prior to its expiration. Well within the three months before the expiration of this agreement, *vide* letter dated 28 May 1994, the plaintiff exercised the option by giving a notice to the person that he had been dealing with all along as landlady ie, the intervener, of his desire to extend the tenancy of the said premises for a further term of two years until 30 October 1996 at a new rental of RM3,000 (Encl. 3, Exh. 'B-4').

From the affidavits filed by both parties, at about this time of issuing the option to renew, it would appear that the plaintiff was put to notice that there was some friction between the intervener and persons having a beneficial interest in respect of the premises that he was renting. Although the plaintiff had given notice of his intention to renew the tenancy it would appear that there were some negotiations as to the possibility of the plaintiff giving up the rear portion of the said premises upon the expiration of the current tenancy at half of the rental of the main tenancy. The notice dated 19 September 1994 issued by the plaintiff's lawyers, M/s. D.P. Vijandran & Assoc. to the first defendant's lawyers then, M/s. Yusuf, Lee, Pathma and Marbeck to that effect, refers (Exh. 'B-8' Encl. 3).

The plaintiff took the position that because he had exercised the option within the requisite period there was in fact a concluded tenancy agreement for another two years at a rental of RM3,000. In these circumstances he continued to stay on the said premises after 30 September 1994.

According to the plaintiff, a week into the extended tenancy, his clinic was in ruins. The plaintiff complains that, on 7 October 1994, the 1st defendant, claiming to be the owner of the said premises and a few unknown men, broke down the walls leading to the office of his clinic. Upon the advice of the person that he had all along been dealing with as landlady, the intervener, that the 1st defendant had no authority to act as she did, the plaintiff lodged at Pantai, Kuala Lumpur Police Report No. E 4549/94 (Exh. 'B-9', Encl. 3) on 7 October 1994.

Another report was lodged by the plaintiff on 28 October 1994 ie, Pantai Report 4904/96 i.e. (Exh. 'B-15', Encl. 3). According to this report the plaintiff complained that the workmen, acting under the instructions of the 1st defendant, ransacked the clinic's cupboards and threw its contents along the corridor. Patients were also prevented access to the clinic by the placement of drums on the staircase. A third report, ie. Pantai Report 5000/94, was lodged by the plaintiff on 4 November 1994. According to this report, the plaintiff stated that he had closed and locked his clinic on 30 October 1994 pending the institution of civil proceedings by reason of the threats and trespasses by persons unknown, acting on the instructions of the 1st defendant. On 4 November 1994 he found the lock of the grill door leading to the clinic had been forced open and workmen carrying out renovation works on the said premises. According to the plaintiff the workmen then obstructed the plaintiff from checking on his things and assessing the damage to his property.

The plaintiff then caused a writ of summons to be issued on 1 November 1994, and on the same day, filed this summons-in-chambers for an injunction to restrain the defendants from entering upon any part of the said premises.

Counsel for the plaintiff submitted that the tenancy agreement entered into by the intervener, in her capacity as owner of her own half share as well as one of the co-administrator of the estate in respect of the other half share, was a binding one. He argues that the intervener had the capacity to enter into such an agreement and that it was valid although the estate had not been expressly named as a party in the agreement executed.

Relying on the affidavit filed by the intervener, the Court was urged to accept that the 1st defendant had full knowledge of the tenancy agreement by reason of the 1st defendant's acknowledgment of receipt of half of the rent collected by the intervener. According to the intervener, direct payments of the rental had been made to the 1st defendant or had been utilised towards payment of the deceased's income tax, towards settlement of the 1st defendant's debts and towards rental in respect of a shophouse rented by the 1st defendant. The intervener had also averred of being responsible for upkeeping and looking after the 1st defendant's children. The accounts presented by the intervener

for the relevant period showing the expenditure/amount disbursed, duly signed by the 1st defendant, was relied upon as conclusive evidence in support that the 1st defendant had full knowledge and had consented to the tenancy entered into in respect of the said premises by the intervener with the plaintiff

It was also the plaintiff's case that the 1st defendant's status as co-administrator and as one of the beneficiaries of the estate in respect of half share of the property does not confer upon her the right to barge in and occupy the premises. Alternatively, even if she did have some right over the said premises, it was the plaintiff's case that a Court order pursuant to s. 7 of the Specific Relief Act 1950 must first be obtained.

Plaintiff's Counsel urges this Court to hold that this was an appropriate case for an interlocutory mandatory injunction. According to him the plaintiff had clearly been unlawfully and forcibly dispossessed of part of the premises lawfully demised to him. Further, the balance of convenience test, according to Counsel for the plaintiff, lies in favour of the plaintiff. According to him the plaintiff would suffer irreparable damage should an injunction not be granted.

The 1st defendant's Counsel argues otherwise. The 1st defendant denies any knowledge of the agreement entered into between the intervener and the plaintiff in respect of the said premises. According to her the 1st defendant's status as a co-administrator of the estate and as one of the beneficiaries of half share of the said property conferred upon the 1st defendant equal rights to the said property with the intervener who owns the other half share.

According to the Counsel for the 1st defendant the tenancy agreement entered by the intervener with the plaintiff was not binding on the estate as the estate had not been expressly cited as a party in the agreement. Accordingly, the subsequent exercise of an option for renewal for a further term conferred by such an "invalid" agreement does not arise.

The 1st defendant took the view that the plaintiff was a trespasser. As such trespasser, it was submitted that s. 7(2) and s. 8 of the Specific Relief Act 1950 does not apply. The 1st defendant cum beneficiary and co-administrator, was not precluded from excercising self-help remedy to repossess the said premises.

It was also the 1st defendant's case that the plaintiff had notice of the 1st defendant's interest in the said premises, prior to the expiration of the tenancy, and had orally agreed to relinquish the rear portion of the said premises to her and to her carrying on the renovation works. This oral promise was the basis upon which the 1st defendant entered into the rear portion of the said premises, carried out renovation works, and the execution of a tenancy

agreement with Set Kon Kim ('the 2nd defendant') for the purpose of the 2nd defendant carrying out the business of a hair dressing saloon.

The principle which ought to guide me is clear. A plaintiff seeking an interlocutory injunction must establish a *prima facie* case of some breach of duty to him. I am however mindful of the words of Lord Diplock in *American Cynamid Co. v. Ehicon Ltd.* [1975] 1 AER 504 at p. 510 that it is no part of the Court's function at this stage of litigation to resolve conflicts of evidence as to the facts on which the claims of either party may ultimately depend nor to decide difficult questions of law which calls for detailed argument and mature consideration. I propose to base my decision on facts which are not disputed or deemed admitted.

Counsel for the 1st defendant has conceded that s. 60 of the Probate and Administration Act enables any one of the personal representative to enter into a tenancy agreement. Section 60 clearly enables the intervener to enter into a tenancy agreement in respect of the estate's half share. The intervener was of course competent to act in her own right in respect of her own half share. In these circumstances I am of the view that the intervener had capacity to enter into a binding tenancy agreement in respect of the whole of the said premises and the agreement entered into between the intervener and the plaintiff appears to be valid.

On the basis of the contemporaneous documents presented before me I find it difficult at this stage to accept the 1st defendant's denial of knowledge of the tenancy entered into. Exhibit 'E1-4' of the intervener's affidavit shows clearly how the estate's half share of rent had been or disbursed by the intervener and of the 1st defendant duly acknowledging the same. The 1st defendant appears to have full knowledge of the plaintiff's tenancy.

I am further of the view that even if the 1st defendant, in her capacity as co-administrator and beneficiary, had some right of occupation to the said premises, s. 7 of the Specific Relief Act must first be complied with. In view of my finding that there was a valid tenancy agreement, I am of the view that the 1st defendant was in error when she viewed the plaintiff as a trespasser. Whatever may be the cause of differences between the 1st defendant and the intervener after the plaintiff had rented the premises for six years, this should not effect the contractual right conferred on the plaintiff to exercise the option clause and the 1st defendant was not entitled to take the law into her own hands by barging in and breaking down the walls.

In all of the circumstances *prima facie*, the plaintiff satisfied me that his rights had been infringed; that he was in possession; that he had been forcibly dispossessed of half of the premises tenanted to him; that such dispossession

took place without his consent; and that such dispossession was not done in due course of law.

On the application of the balance of convenience test I have been urged not to issue an injunction by reason of the fact that the 1st defendant had already expended monies by the renovations and the 2nd defendant already in occupation of the rear portion of the said premises and operating a hair saloon there. It was submitted that there was nothing exceptional in the circumstances of this case warranting the issuance of an interlocutory mandatory injunction before trial.

Applying the balance of convenience test I am of the view that it lies in favour of the plaintiff. The status that has to be preserved is the position before the forcible entry by the 1st defendant. The 1st defendant cannot seek to take advantage of her own wrongful act of taking the law into her own hands.

In all the circumstances the plaintiff's application for an injunction was allowed upon the usual undertaking as to damages and directed that the costs of and incidental to this application be costs in the cause.

Reported by Michele Saw